IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.96 OF 2004

IN

NOTICE OF MOTION NO.2514 OF 2000

IN

SUMMARY SUIT NO.6376 OF 1999

1.Jai S.Kshirsagar & another. ...Petitioners.

vs.

1.Munna Mafa Waghela & another. ...Respondents.

Mr.H.V.Chande, for Petitioners.

None for respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 5th June,2007.

P.C.:-

1. By this petition, the petitioners allege that the respondents have willfully violated the statement made by them which was recorded by the Court in its order dated 28th June,2001 passed in

Notice of Motion no.2514 of 2000 as also the interim order made in terms of prayer clause (c) of the above referred notice of motion by order dated 14.12.2001. The relevant facts are that the petitioners have filed summary suit against the respondents defendants for money decree. That suit was registered as Suit no.6376 of 1999. In that suit, a notice of motion was taken out being notice of motion no.2514 of 2000 seeking attachment before judgment. When that notice of motion was moved before the Court for ad-interim order, the defendants appeared and made statement. That statement was recorded by the Court in its order dated 28.6.2001. The defendants stated that without seeking leave of the Court he will not create third party right, transfer, alienate or part with possession of the suit premises described in prayer clause (c) of the notice of motion. In prayer clause (c) of the notice of motion, the property mentioned was Room no.20, 4th floor, Building A/5, Sahunagar, Mahim, Mumbai. It appears that the notice of motion no.2514 of 2000 came for final hearing before the Court and disposed of that notice of motion by order dated 14.12.2001. By that order the Court granted temporary injunction in terms of prayer clause (c) of the notice of motion. Prayer clause (c) of the notice of motion reads as under:-

> "(c) that pending the hearing and final disposal of the suit interim order of injunction be passed by this

> Hon'ble Court restraining the Defendants, their servants and agents from in any manner selling, disposing off, alienating, encumbering, parting with possession or creating third party rights and interest or deal with Room no.20, 4th floor, building A/5, Sahunagar, Mahim, Mumbai."

2. Thereafter, the suit itself was decreed by the Court by order dated 30.4.2002. The order of temporary injunction which was passed by the Court which was operating during the pendency of the suit was not continued after the decree was passed, with the result the order of temporary injunction ceased to operate from 30.4.2002. The petitioners state in the contempt petition that after the suit was decreed, he has taken up the proceedings for attachment of the property which is described in prayer clause (c) of the notice of motion quoted above. When the bailiff of the Court went to levy the attachment on the room on 17.9.2003 it was found that the room was in possession of one Mr.Suryakant B. Nagvekar and he claimed that the room has been transferred by the respondents to him. According to the averments in the petition, the transfer was effected by the defendants in favour of said Mr.Nagvekar on 21.7.2001. The petitioners submit that because the transfer was effected on 21.7.2001 and the respondents have also parted with possession on 21.7.2001, the respondents have willfully committed breach of the statement

made by them which was recorded by the Court in its order dated 28.6.2001. The petitioners have not produced any document by which either the respondents partied with possession or transferred the property. The learned Counsel appearing for petitioners relied on the affidavit filed by Mr.Nagvekar in support of the chamber summons no.1341 of 2004 taken out by him for lifting the attachment. Perusal of that affidavit shows that according to Mr.Nagvekar he agreed to purchase the room from the respondents in the year 2001. He does not disclose either month or date of the year 2001 when he entered into the agreement. Then he states that he paid the entire agreed amount of consideration to the respondents in July,2002. Then he states that on 19.7.2002 the respondents have made an affidavit relinquishing all their right, title and interest in the room. In paragraph 5, Mr.Nagvekar states that he is in peaceful possession of room from 21.7.2001 and in support of that he relied on a copy of the ration card. Perusal of the ration card shows that it does not disclose any date from which Mr.Nagvekar is in possession of the room. It appears that the date mentioned in paragraph 5 of the affidavit i.e. the date 21.7.2001 is a mistake, because even according to Mr.Nagvekar he paid the amount of full consideration in July,2002 and it is only thereafter, the rights were relinquished by the respondents. Thus, it appears from the material available on record that the room was transferred and the possession was also given in the month of July,2002 and not in

July,2001 as claimed by the petitioners. In July,2002 there was no temporary injunction granted by this Court operating, it came to an end 30.4.2002 when the suit was decreed. Therefore, assuming that the respondents have transferred the tenancy and parted with the possession in July,2002 though no document has been produced by which the transfer has been effected, it cannot be said that the respondents have committed breach of their statement or temporary order made by the Court. The petition is therefore, disposed of.